IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 408 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

S P MISHRA

Versus

BHAVESH TRADERS (OWNERS/SOLE PROP. MANGALDAS JESINGBHAI

Appearance:

1. Criminal Revision Application No. 408 of 2001

MR S B Vakil with Mr HV CHHATRAPATI for Petitioners No. 1-5

RULE SERVED for Respondents No. 1-2

MR B D Desai, APP for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/01/2002

ORAL JUDGEMENT

This is an application in revision under Section 397 read with section 401 of the Code of Criminal

Procedure, 1973 (for short, 'the Code'), challenging the order dated 17.4.2001 recorded by the learned Metropolitan Magistrate at Ahmedabad City in Criminal Case No.36/2001, under which the learned Magistrate was pleased to pass an order for referring the complaint of the first respondent to the concerned police station i.e. Naranpura police stastion for enquiring the case under section 202 of the Code. The first respondent herein filed the aforesaid complaint before the aforesaid Court stating that the Reserve Bank of India had entered into a contract with the contesting respondent for stitching certain suits for male and female staff members of the said bank. In fact, according to the case of the contesting respondent, charges were also fixed for stitching those suits and clothes were required to be supplied by the said Bank. Cloth was supplied to the contesting respondent and the contesting respondent was required to give a bank guarantee in a sum of Rs.35,000/which he had supplied on 8.9.2000. The contesting respondent contended that the present applicant had dishonest intention not to pay the stitching charges to the contesting respondent and, therefore, they demanded additional bank guarantee in a sum of Rs.50,000/- which he had supplied on 21.11.2000. That thereaafter, the contesting respondent had supplied 191 suits for male employees and 11 suits for female employees of the said bank. That thereafter, other suits were also prepared and supplied to the said bank. That the contesting respondent has been stitching suits for the employees of the said bank since 1995 and there was no oral or written complaint about the said stitching of those suits for the employees of the said bank. It is also contended that the first applicant demanded bribe from the contesting respondent for clearing the bills. That the contesting respondent was unable to comply with the said demand and, therefore, the applicant enforced the said bank guarantee of Rs.85,000/- and collected the said amount. It is also alleged that even the stitching charge of more than Rupees One lakh has also been retained by the applicants and have committed offence punishable under sections 420 and 409 read with section 120(B) and 114 of IPC. On receiving the said complaint, verification was recorded on oath and thereafter, the learned Magistrate passed an order for referring the complaint for enquiry under section 202 of the Code to the Police Inspector of Naranpura Police Station.

2. Feeling aggrieved by the aforesaid order of the learned Magistrate, the applicants have preferred this application in Revision before this Court. It has been mainly contended here that there is a dispute of civil

nature between the bank and the contesting respondent and that since the suits supplied by the contesting respondent were not supplied in time and since many of those suits were not stitched properly and according to the measurements of the employees of the bank and in some cases the cloth had been changed, the bank had decided not to pay the stitching charges to the contesting respondent and during the course of the meeting between the bank and the contesting respondent, the bank guarantee was also called for and it was supplied by the contesting respondent. That in fact there is no criminal element in the present case and consequently, the learned Magistrate ought not to have referred the matter for police enquiry under section 202 of the Code. That in fact, the present applicants are not involved in the offence and the applicants had not breached the contract with the contesting respondent. That in fact there is a contract between the contesting respondent and the Bank and, therefore, the applicants herein are not answerable to the complainant of the contesting respondent. That therefore, the complaint and the order be quashed by exercising revisional powers.

On receiving the Revision Application, rule was issued and Mr B D Desai, learned APP has appeared on behalf of the State to contest the revision application. So far as the contesting respondent is concerned, though duly served, he has not found it proper to appear and contest thhis revision.

3. I have heard Mr S B Vakil, learned Sr.Advocate with Mr Chhatrapati, learned Advocate for the applicants and Mr B D Desai, learned APP for the State. They have also taken me through the complaint and other papers on the file of this Revision Application.

4. Learned Sr.Advocate appearing for the applicants has argued at length that there was no contract between the applicants and the contesting respondent but it was with the bank itself. In order to support the said contention, the learned Sr. Advocate for the applicant has taken me through a letter at page 22 on the file fo this Revision under which the contract was given for stitching of the said suits to the contesting respondent in accordance with the terms and conditions laid down therein.

5. Thereafter, the bank guarantees have also been produced on record, which stand in favour of the Bank, and thereafter the contesting respondent had addressed a letter dated 22.1.2001 to the Regional Manager of the

Reserve Bank of India stating that the officers of the Bank had demanded additional bank guarantee of Rs.50,000/-. It is also contended by him that the officers had given a wrong statement that the suits were not stitched properly. That they have wrongly enforced the bank guarantee supplied by him and, therefore, appropriate action should be taken. Now it would be relevant to refer to one R.D. referred by the contestinga respondent. It is not clear as to who the officer was. It is not clear as to whether it is an abbreviation of the designation of an officer or they are the initials of the officer. Even the learned APP was not in a position to clarify this position since the matter arises from the compliant and no further material was on record. Mr Desai, learned APP aruged on behalf of the state that the contesting arespondent was prevented by the said R.D. from meeting applicant no.1 and he was being harassed. Now that R.D. is not an accused before the trial court. Moreover, if the said R.d. had come in the way of the contesting respondent then, the contesting respondent could have directly approached the first applicant. He could have been contacted on phone or in person. But nothing appears to have happened in the matter and, therefore, this allegation does not appear to be well founded. Even if R.D. prevented the original complainant from meeting the first appellant herein, it cannot be termed as an offence committed by the present applicants.

6. Then, it is a matter of record that the parties were at negotiation and it was alleged by the bank that the suits were not stitched in accordance with the contract. It is also alleged by the bank that in some cases, clothes had been changed. In that view of the matter, it can be said that there is a civil dispute between the bank and the second respondent.

7. However, so far as the applicants are concerned, they have been shown as accused persons but no allegation has been made against them. It is not the case of the second respondent that the present applicants had taken away the entire amount for their purpose. It is not the case of the contesting respondent that the two bank guarantees were enforced by these applicants for their own purpose. If it has been done by the bank, then appropriate action should have been taken by the contesting respondent against the bank and not against the present applicants. It is to be seen that the contesting respondent has stated in para 3 of the complaint that the first applicant has demanded bribe for clearing the bills but no amount of bribe has been stated

thereon. However, in his verification before the Court on oath, he has stated that the applicants herein had demanded bribe of Rs.20,000/- from him. So there is apparent contradiction between the statement of fact made in para 3 of the complaint and the statement made on oath during the course of the oral verification of oath before the court. It should be seen that in para 3 of the complaint, reference has been made of applicant no.1 but in oral veritification on oath all the applicants have been involved. There appears to be apparent contradtiction between the two. Then, if we refer to the letter addressed to the Regional Manager, Reserve Bank of India dated 21.1.2001, it is clear that no allegation of bribe has been made in the said letter by the contesting respondent. This shows that the contesting respondent has made different statements of facts at different point of time. Any way, it is apparently clear that there is no material on record to show that the present applicants were involved in their personal or official capacity in the dealing in question. On the contrary, there appears to be some sort of dispute of civil nature between the bank and the contesting respondent.

8. The learned Sr.Advocate appearing for the applicants herein has also argued that it was conveyed to the contesting respondent that out of 202 suits supplied by him, 106 were not in order and only 96 suits were in order. This shows that there is serious civil dispute between the two. Therefore, it cannot be said that the present applicants committed offences punishable under section 420 read with section 120(B) of IPC. The offence punishable under section 420 of IPC will come into play, if there was allegation and prima facie evidence of dishonest intention at the initial stage. There is no averment in the complaint or in the oral statement on oath before the Court that there was a dishonest intention on the part of the present applicants right from the beginning. Then there is an allegation about offence punishable under section 409 of IPC. Now whatever bank guarantee supplied by the contesting respondent was supplied to the bank are not in favour of the applicants. In tht view of the matter, the bank guarantees could not be enforced by the applicants but they could be enforced only by the bank. In that view of the matter, it cannot be said that the applicants were entrusted with some properties in respect of which they committed criminal breach of trust and criminal misappropriation.

9. In above view of the matter, it is clear that the allegations made in the complaint are not well founded

and in fact even if the allegations made in the complaint and in the notice dated 21.1.2001 are right as they stand, no offence is made out against the present applicants and, therefore, no fruitful result will be derived, even if the matter is investigated and enquired under section 202 of the Code by the polie station concerned.

10. In above view of the matter, when the allegations in the complaint do not lead to any particular offence, there is no alternative with the court but to allow this Revision Application and quash the aforesaid order and the complaint itself.

11. For the foregoing reasons, this Revision Application is allowed. The order passed on 17.4.2001 by the learned Metropolitan Magistrate, Court No.9 at Ahmedabad City in Criminal Case No.36/2001 directing to refer the complaint to Naranpura police station for investigation and enquiry under section 202 of the Code as well as the complaint referred to hereinabove, are hereby ordered to be quashed.

It is submitted at this stage that the police had issued summons to the applicants in the matter. Naturally and necessarily, the said summons issued to the applicants also stand quashed - meaning thereby that the present applicants will not be required to attend to the aforesaid police station in connection with the aforesaid enquiry arising from the said order of the learned Magistrate. Rule is made absolute to the aforesaid extent.

D.S. permitted.

10.1.2002 [D P Buch, J.]

msp